

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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TERRIS HANKS,

Petitioner,

DECISION AND ORDER

04-CV-6215L

v.

EKPE D. EKPE,

Respondent.

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Petitioner, Terris Hanks (“Hanks”), filed a petition for habeas corpus relief pursuant to 28 U.S.C. § 2254 challenging his conviction in Livingston County Court of promoting prison contraband. Hanks has now been released to parole supervision on that conviction.

This Court referred the petition to United States Magistrate Judge Victor E. Bianchini pursuant to 28 U.S.C. § 636(b). Magistrate Judge Bianchini issued a thorough 15 page Report and Recommendation recommending that the petition be dismissed. Petitioner was notified of his right to file objections to the Report, but no objections have been filed.

Magistrate Judge Bianchini determined that the petition was untimely and not filed within one-year statute of limitations provided by the Anti-terrorism and Effective Death Penalty Act (“AEDPA”). 28 U.S.C. § 2244(d)(1). Magistrate Judge Bianchini thoroughly considered the limitations issue and whether there were facts to support any equitable tolling that might extend the

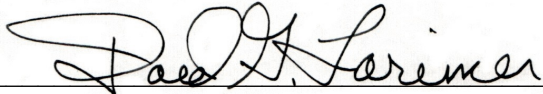
limitation period. I agree with Magistrate Judge Bianchini's analysis and agree with his conclusion that the petition is untimely and there is no basis whatsoever for any equitable tolling.

#### CONCLUSION

I accept and adopt the Report and Recommendation (Dkt. # 17) of United States Magistrate Judge Victor E. Bianchini in all respects. The petition for a writ of habeas corpus is dismissed with prejudice.

I decline to issue a certificate of appealability because Hanks has failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c).

IT IS SO ORDERED.



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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
October 19, 2007.